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# In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 26

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

EXCHANGE PARTS COMPANY

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

### OPINIONS BELOW

The opinion of the court of appeals (R. 115–129) is reported at 304 F. 2d 368. The Board's decision and order (R. 52–54) are reported at 131 NLRB 806.

### JURISDICTION

The judgment of the court of appeals was entered on July 23, 1962 (R. 130). The petition for a writ of certiorari was filed on October 18, 1962, and was granted on May 27, 1963 (R. 131). The jurisdiction of this Court rests on 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended, 29 U.S.C. 160(e).

## QUESTION PRESENTED

Whether an employer violates Section 8(a)(1) of the National Labor Relations Act by granting economic benefits to its employees, during the course of a union organizational campaign and immediately prior to a Board-ordered representation election, for the purpose of inducing the employees to reject the union in the election.

## STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix, *infra*, p. 19.

## STATEMENT

### I. THE BOARD'S FINDINGS OF FACT

The respondent (also known as "EPCO") is a Texas corporation which is engaged in the rebuilding of automobile parts (R. 21; 11, 14). Its main office and place of business is at Fort Worth, Texas, where the events here in issue occurred (R. 21; 11, 14).

EPCO's employees were not represented by any collective bargaining agent before October 1959. On or about October 26, 1959, the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, began an organizational campaign in EPCO's plant (R. 88–89). On November 9, the union wrote a letter to EPCO's president in which it informed EPCO that a majority of its employees had designated the union to represent them in contract negotiations (R. 22; 99–100). Although EPCO concededly received the letter, there is no evidence that it made any reply. On November 16,

the union filed a representation petition with the National Labor Relations Board, and the Board, after holding a hearing, directed on February 19, 1960, that an election be held (R. 22; 57). March 18, 1960, was set as the date for the election.

On February 25, 1960, EPCO sponsored an employee dinner at the Pioneer Palace, a public building in Fort Worth (R. 23; 76). At the dinner the employees were permitted to vote on whether an additional holiday which had previously been promised to them should be arranged so as to permit each employee to take it on his birthday (R. 23; 59).[1] EPCO's vice-president also spoke to the assembled employees about the forthcoming Board election. He told them that in its organizing campaign the union had "twisted" the facts concerning benefits which management had conferred, and that they

[1] This was a change in EPCOs' usual holiday policy inasmuch as it was the first time that the employees were permitted to decide when their holiday would fall (R. 23; 89). In 1955 EPCO had established its first paid holiday and announced that an additional holiday would be added each year thereafter. Consequently, there were four paid holidays in 1958. Early in 1959 EPCO announced that the additional 1959 holiday would be a "floating" one, *i.e.*, it would be scheduled for a day following an existing holiday. The holiday was subsequently scheduled for the day after Christmas. At the time EPCO's vice-president also informed the employees that the additional 1960 holiday would also be a "floating" one. No further notice regarding the date of this holiday was given before the dinner of February 25. The Board found that the timing of the birthday holiday announcement was intentionally arranged so as to influence the outcome of the election (R. 26). The court of appeals held the evidence insufficient to support this finding (R. 118–119), and the correctness of its ruling in this regard is not in issue here.

would decide by their vote whether they "wished to hand over their rights to speak and act for themselves" (R. 23; 60).

On March 4, 1960, two weeks before the Board election was to be held, EPCO sent its employees a letter disparaging the union's "empty promises," and asserting that it would not "take a union to get additional improvements in the future" (R. 90–91). Accompanying the letter was a pamphlet which, *inter alia*, announced two other changes in working conditions under the heading of "BENEFITS AT EPCO" which had been "added or increased" in 1960:[1] (1) With a single exception (a July 4 holiday which, in 1959, had fallen on a Saturday) paid holidays had not previously been counted as working time in computing weekly overtime pay. Under the newly announced system, paid holiday time was to be considered time worked for the purpose of computing weekly overtime for any employee who was at work on the day preceding the holiday and on the day following.[2] (2) A revision in the regula-

[1] The full text of the letter and accompanying pamphlet appears at pp. 90–96 of the Record. The references to the 1960 benefits are set out at pp. 94–95 of the Record.

[2] The pamphlet announced that this change "will mean $5.00 to $6.00 more per employee per holiday." EPCO's employees were ordinarily paid for their 49½-hour workweek at a 40-hour-a-week base pay and at overtime rates for the additional 9½ hours (R. 114). Under the prior system, the 9 hours of the ordinary paid holiday were treated at regular rates, with the result that in a holiday week employees were being paid for 49 hours at regular rates and for only ½ hour at the overtime scale (R. 61). On this basis the gross pay on an average paycheck represented by Respondent's Exhibit 11 (R. 114) for a holiday week would come to $62.19 instead of $67.81.

tions concerning the one-week vacation allotted to the employees permitted employees to sandwich their vacations between two weekends. This gave them an additional one-and-a-half days for extended vacation trips.[4]

On March 18, 1960, the Board election was held, and the Union lost by a vote of 121 to 94 (R. 22; 17).

## II. THE BOARD'S CONCLUSIONS AND ORDER

On the foregoing facts, the Board found that EPCO had announced and granted increased overtime and vacation benefits shortly before the representation election for the purpose of inducing its employees to reject the union. Accordingly, the Board concluded that the Company had interfered with and restrained the employees in the exercise of their organizational rights, in violation of Section 8(a)(1) of the Act (R. 27–28, 52). The Board's order directed EPCO to

[4] EPCO operated on a 5½ day week, including a half a day on Saturday. Prior to the Union campaign, the vacation week ran from Friday through Thursday with only one week-end in between. Under the new plan, vacations could begin on a Monday so that an employee taking a week's vacation would leave work at noon on Saturday and return a week from the following Monday. By having an extra week-end of leave, his vacation was "extended" by 1½ days (R. 60–62, 81).

Before the Board and the court of appeals, EPCO contended that the new overtime pay basis was in fact decided upon in 1959, but that, due to an error in the accounting department, it had not been fully effectuated; hence the March 4 pamphlet was in error in listing it as a new benefit for 1960 (R. 61, 85–86). Similarly, EPCO contended that increase in vacation period merely flowed from a change in the workweek which had been announced in January 1960 (R. 62, 79–81). The Board found both of these contentions to be without merit (R. 26–27) and the court of appeals did not overturn this finding (R. 119–120).

cease and desist from the unfair labor practices found and from any like or related illegal conduct, and required it to post appropriate notices (R. 52–53).[4]

### III. THE DECISION OF THE COURT OF APPEALS

The court of appeals denied enforcement of the Board's order. It agreed that there was substantial evidence in the record as a whole to support the Board's finding that EPCO had introduced and announced the increased overtime and vacation benefits on March 4, 1960 as part of its "effort to oppose the Union" and "with an intent to influence the outcome of the representation election" which was just two weeks away (R. 120). Nonetheless, the court held that granting the benefits did not violate Section 8(a)(1) of the Act because there was no "objective evidence of restraint or coercion, such as conditioning the benefits on the employees voting against the union or relinquishing rights of self-organization" (R. 121). The court construed the words "interfere with, restrain, or coerce" in Section 8(a)(1) as confined to 'the use of force and pressure" and as not intended to reach mere "[p]ersuasive efforts" (R. 128). Since EPCO's benefits "were

[4] The examiner also found that the timing of the birthday holiday announcement was intentionally arranged so as to influence the election, and the Board agreed. (See note 1, pp. 3–4, *supra*.) (The court of appeals rejected this finding, and its ruling on this point was not questioned in the petition for certiorari.) In addition, the examiner found that the company's action had interfered with the election, and he recommended that the election be set aside (R. 28, 31). The Board did not consider this question since the Union withdrew its representation petition before the case went to the Board (R. 52, n. 1; 51, 35).

put into effect unconditionally on a permanent basis * * * [without] any implication the benefits would be withdrawn if the workers voted for the union," the court concluded that they did not "coerce" the employees, but only "persuade[d]" them to vote against the Union (R. 126–127).

## SUMMARY OF ARGUMENT

A. The dominant purpose of Section 8(a)(1) of the National Labor Relations Act is to protect employees' "rights to self-organization" from interference by employers. The conduct forbidden by this provision is not limited, as the court of appeals assumed, to "the use of force and pressure." For an employer is able to undermine a union's organizational effort as effectively by inducement as by threat. And just as a promise of benefit is a prohibited form of inducement if it is conditioned upon the employees' rejection of the union, so is the actual conferral of a benefit prohibited if, in the context of the surrounding circumstances, it demonstrates that the employer will deal more favorably with the employees if they defeat the union.

B. This is not to say that all improvements in conditions of employment which are instituted at or about the time of a representation election or during an organizing campaign necessarily constitute unfair labor practices. If the employer is motivated by a legitimate business purpose, his conferral of benefits upon his employees is not prohibited by Section 8(a)(1), even though its incidental effect may be to discourage union membership. Only if it is the employer's purpose to discourage such membership

is the "claim of legitimacy * * * totally dispelled," *National Labor Relations Board* v. *Erie Resistor Corp.*, 373 U.S. 221, 228, so that conduct which is otherwise permissible becomes an unfair labor practice.

C. Section 8(c) has no application here. It is intended to preserve for employers and unions the right to express their views and disseminate them to the employees. It is not a license for employers to resort to economic power which only they possess and to which the union cannot effectively respond.

## ARGUMENT

### AN EMPLOYER VIOLATES SECTION 8(a)(1) OF THE NATIONAL LABOR RELATIONS ACT IF HE GRANTS ECONOMIC BENEFITS TO HIS EMPLOYEES FOR THE PURPOSE OF INDUCING THEM TO REJECT THE UNION IN A FORTHCOMING REPRESENTATION ELECTION

#### A. SECTION 8(a)(1) MAY BE VIOLATED BY INDUCEMENTS AS WELL AS BY CONDITIONAL PROMISES, THREATS OR FORCE

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of" the right of self-organization. Ever since *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U.S. 678, it has been well-established that an employer violates Section 8(a)(1) if he grants economic benefits to his employees in exchange for their agreement to abandon or reject the union. In that case the Court held it to be a separate unfair labor practice for an employer, "in response to the offer of its employees, to induce them by the grant of wage increases, to leave the union," 321 U.S. at 685. This

conclusion, based upon the premise that the "action of employees with respect to the choice of their bargaining agents may be induced by favors bestowed by the employer as well as by his threats or domination" (*id.* at 686), has been consistently followed.*

The reason for the rule is apparent. Section 7 guarantees to employees the right "to self-organization" and "to form, join, or assist labor organizations." Section 8(a)(1) implements this guarantee by prohibiting interference, restraint or coercion on the part of employers. Both of these provisions must be considered in light of the Act's policy, set out in Section 1, to protect "the exercise by workers of full freedom of association, self-organization, and designa-

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* See, *e.g.*, *National Labor Relations Board* v. *Lowell Sun Publishing Co.*, decided June 11, 1963 (C.A. 1), 53 LRRM 2480, 2482-2483; *National Labor Relations Board* v. *Pyne Molding Corp.*, 226 F. 2d 818, 820 (C.A. 2); *National Labor Relations Board* v. *Jamestown Sterling Corp.*, 211 F. 2d 725, 726 (C.A. 2); *National Labor Relations Board* v. *James Thompson & Company*, 208 F. 2d 743, 748 (C.A. 2); *National Labor Relations Board* v. *Cen-Tennial Cotton Gin Co.*, 193 F. 2d 502, 503 (C.A. 5); *National Labor Relations Board* v. *Williamson-Dickie Manufacturing Co.*, 130 F. 2d 260, 262 (C.A. 5); *National Labor Relations Board* v. *Bailey Co.*, 180 F. 2d 278 (C.A. 6); *National Labor Relations Board* v. *Valley Broadcasting Co.*, 189 F. 2d 582, 586 (C.A. 6); *Indiana Metal Products Corp.* v. *National Labor Relations Board*, 202 F. 2d 613, 620 (C.A. 7); *National Labor Relations Board* v. *Crown Can Co.*, 138 F. 2d 263, 266 (C.A. 8), certiorari denied, 321 U.S. 769; *National Labor Relations Board* v. *Bradley Lumber Co.*, 128 F. 2d 768, 770-771 (C.A. 8); *National Labor Relations Board* v. *West Coast Casket Co.*, 205 F. 2d 902, 905 (C.A. 9); *National Labor Relations Board* v. *Radcliffe*, 211 F. 2d 309, 311, 315-316 (C.A. 9); *Joy Silk Mills, Inc.* v. *National Labor Relations Board*, 185 F. 2d 732, 739, 740-741 (C.A.D.C.), certiorari denied, 341 U.S. 914.

tion of representatives of their own choosing." Hence it follows, as this Court noted in *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U.S. 793, 798, that the "dominant purpose" of Section 8(a)(1) is to insure "the right of employees to organize for mutual aid without employer interference."

The guarantee against "employer interference" is breached when an employer promises economic benefits in exchange for the employees' rejection of a bargaining agent. For the employer is then using his economic power coercively in the same manner as one might use threats of force or of economic sanctions. Employees who are told that they will receive wage increases or other improved working conditions if they vote against the union are no longer realistically able to weigh only the intrinsic merits of collective bargaining and representation by the union or unions who seek certification; an element of substantial immediate importance but of minimal long-range significance has unfairly tipped the scales in favor of the employer. Consequently, Section 8(a)(1) is violated by an employer's conditional promise. "[I]nterference is no less interference because it is accomplished through allurements rather than coercion." *Western Cartridge Co.* v. *National Labor Relations Board*, 134 F. 2d 240, 244 (C.A. 7).

Although the court of appeals recognized that an employer's promise to confer benefits upon his employees if they rejected the union would be an unfair labor practice, it distinguished the present case on the ground that economic benefits were actually granted and not merely promised. It was the court's view

that, if benefits are "put into effect unconditionally on a permanent basis," the employees' choice whether or not to vote for the union remains "untrammelled by considerations of the impact their decision would have on their job security, compensation, or relations with the employer" (R. 127). The court accordingly concluded that EPCO had engaged in a course of conduct that was "persuasive, not coercive."

The court's reasoning is based on the mistaken premise that an employer's grant of benefits must expressly be made conditional upon rejection of the union in order to discourage employee support of the proposed bargaining agent. In fact, however, if an employer announces or grants economic benefits in a context that makes apparent his purpose of defeating organization, employees are likely to infer that he is demonstrating, by resort to economic power which he alone possesses, that the defeat of the union will produce more substantial benefits than collective bargaining. The implication was obvious in the present case, for the letter accompanying the pamphlet in which the new vacation and overtime plans were announced stated, "The Union can't put any of those things in your envelope—*only the Company can do that,*" and "[I]t won't take a Union to get additional improvements in the future" (R. 90). The employees were told, in effect, that the continued accumulation of economic benefits hinged upon the defeat of the union, notwithstanding the employer's failure to make any explicit threat or promise. Hence, as the Seventh Circuit observed in *Indiana Metal Products Corp.* v. *National Labor Relations Board,*

202 F. 2d 613, 620, it was irrelevant that "no strings were attached to the offer and no threats [were made] to withdraw the benefits if the employees persisted in supporting the union." See also *National Labor Relations Board* v. *Pyne Molding Corp.*, 226 F. 2d 818, 820 (C.A. 2); *National Labor Relations Board* v. *Crown Can Co.*, 138 F. 2d 263, 266 (C.A. 8), certiorari denied, 321 U.S. 769; *National Labor Relations Board* v. *West Coast Casket Co.*, 205 F. 2d 902, 905 (C.A. 9).[1]

B. AN ANTIUNION PURPOSE IMPEACHES CONDUCT WHICH MIGHT OTHERWISE BE JUSTIFIED BY LEGITIMATE BUSINESS CONSIDERATIONS

In *National Labor Relations Board* v. *Erie Resistor Corp.*, 373 U.S. 221, 227–228, decided last Term, this Court observed:

> When specific evidence of a subjective intent to discriminate or to encourage or discourage union membership is shown, and found, many otherwise innocent or ambiguous actions which are normally incident to the conduct of a business may, without more, be converted into unfair labor practices * * * Such proof itself is normally sufficient to destroy the employer's claim of a legitimate business purpose, if one is made, and provides strong support to a finding that there is interference with union rights or that union membership will be discouraged.

[1] To the extent that the opinion in *Peter J. Schweitzer, Inc.* v. *National Labor Relations Board*, 144 F. 2d 520, 524 (C.A.D.C.), may support the view of the court below, it is our position that the correct principle was stated by Judge Edgerton in his dissenting opinion in that case (144 F. 2d at 526–527), and that the District of Columbia Circuit has subsequently applied it in *Joy Silk Mills* case, note 6, *supra*.

> Conduct which on its face appears to serve legitimate business ends in these cases is wholly impeached by the showing of an intent to encroach upon protected rights. The employer's claim of legitimacy is totally dispelled.

The same general principle is applicable to benefits which are conferred during an organizational compaign and shortly before the certification election. An employer is ordinarily free during such a campaign to increase wages or otherwise to institute improved conditions of employment if the changes are prompted by legitimate business considerations.[8] Such conduct may, under a strictly literal interpretation of Section 8(a)(1), be said to "interfere" with the employees' rights of self-organization, at least to the extent that they obviate some of the conditions which originally impelled the employees to seek collective bargaining. But the "interference" will have little tendency to restrain or coerce the employees' free choice. For, if it is apparent to the employees that there is a legitimate business purpose for the employer's action, they are not likely to consider the benefits conferred as something which could only be gained and retained if there were no union.[9] What

[8] Certain kinds of changes, however, may be inherently discriminatory or so destructive of the rights guaranteed by the Act that they would be prohibited irrespective of the employer's motives. See *National Labor Relations Board* v. *Erie Resistor Corp.*, *supra*. The benefits in the present case were not of that nature.

[9] Moreover, even if a grant of benefits in these circumstances could be thought to restrain or coerce the employees, a privilege is accorded the employer to inflict this "injury" in the interest of accommodating his legitimate interest in running his busi-

little interference remains is justified by the employer's interest in the normal operation of his business.

But if an employer does as EPCO did in the present case and manifests a clear purpose of "minimiz[ing] the influence of organized bargaining * * * [and] interfer[ing] with the right of self-organization by emphasizing to the employees that there is no necessity for a collective bargaining agent" (*May Department Stores Co.* v. *National Labor Relations Board*, 326 U.S. 376, 385), the economic benefits which he grants in order to make his demonstration effective are prohibited by Section 8(a)(1). The impact of this kind of demonstration, taken together with the implications arising from the employer's motive, is coercive, and its effect is substantially to discourage the employees from voting for the union.

This distinction was clearly stated by the Board in *Hudson Hosiery Co.*, 72 NLRB 1434, 1437, and has been consistently followed:[10]

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ness. See *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U.S. 793, 798. But this immunity exists only if the employer acts for the purpose for which the privilege was given. Hence, where, as here, his motive is antiunion, the privilege will not protect him. This is not a special rule applicable to labor cases; it accords with the general law of torts. See *National Labor Relations Board* v. *Columbia Products Corp.*, 141 F. 2d 687, 688 (C.A. 2).

[10] For Board decisions in which the economic benefits were found to be motivated by antiunion considerations, see *Standard Coil Products, Inc.*, 99 NLRB 899; *Reeves Instrument Corp.*, 104 NLRB 610; *Pyne Moulding Corp.*, 110 NLRB 1700; *Bata Shoe Co.*, 116 NLRB 1239; *Willard's Shop Rite Markets*, 132 NLRB 1146; *Lowell Sun Publishing Co.*, 136 NLRB 206.

For Board decisions in which the economic benefits were found to be motivated by business considerations, see *Burns Brick Co.*, 80 NLRB 389; *W. C. Nabors Co.*, 89 NLRB 538;

> [W]e do not mean that an employer is foreclosed from announcing or granting economic benefits during a union's organizational campaign or during the pendency of a Board ordered election. What is unlawful under the Act is the employer's granting or announcing such benefits * * * *for the purpose* of causing the employees to accept or reject a representative for collective bargaining.

In the present case there was substantial evidence, as the court of appeals recognized (R. 120), to sustain the Board's finding that EPCO's announcement of overtime and vacation benefits was intentionally timed to induce the employees to reject the union. Consequently, even if the particular benefits might otherwise have been warranted for business reasons, they were "wholly impeached" by EPCO's antiunion motive, which also provided "strong support" for the finding that interference with the employees' rights had resulted. *National Labor Relations Board* v. *Erie Resistor Corp.*, 373 U.S. 221, 228.

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*Campbell & McLean, Inc.*, 106 NLRB 1049; *Jackson Tile Mfg. Co.*, 122 NLRB 764; *True Temper Corp.*, 127 NLRB 839, 843–844. Although there is language in *American Freightways, Inc.*, 124 NLRB 146, which suggests that motive may be irrelevant, the later decisions, *supra*, negate that suggestion. See, in particular, the discussion of *American Freightways* in *True Temper, supra.*

For court of appeals cases holding that a promise or grant of economic benefits was motivated by business considerations and thus was not violative of Section 8(a)(1), see *National Labor Relations Board* v. *W. T. Grant Co.*, 208 F. 2d 710, 712 (C.A. 4); *National Labor Relations Board* v. *Cleveland Trust Co.*, 214 F. 2d 95, 98–100 (C.A. 6); *Bonwit Teller, Inc.* v. *National Labor Relations Board*, 197 F. 2d 640, 644–646 (C.A. 2), certiorari denied, 345 U.S. 905; *National Labor Relations Board* v. *The Newton Co.*, 236 F. 2d 438, 446 (C.A. 5).

Finally, there is no basis for the fear of the court of appeals that, if EPCO's acts were held to violate Section 8(a)(1), employers might be inhibited "from improving working conditions, increasing wages, and reducing hours of labor" (R. 128). Whenever motive determines the legality of conduct, the actor runs the risk that his motive will be subject to scrutiny; but the burden of proving that the employer has acted unlawfully rests upon the General Counsel. The employer has full opportunity before the examiner and the Board, and then in the court of appeals, to contest the sufficiency of the evidence against him. His position is no different from that of an employer who is charged with violating Section 8(a)(3) by discharging an employee on account of union activity. The fact that motive is an issue is no reason for refusing to give effect to the Act. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45–46.

C. SECTION 8(C) DOES NOT PERMIT AN EMPLOYER TO USE HIS ECONOMIC POWER TO "PERSUADE" HIS EMPLOYEES TO REJECT A UNION

The court of appeals buttressed its construction of Section 8(a)(1) by relying upon Section 8(c) which, it said, preserves to employers the right to use "persuasive efforts" to defeat a union. The court reasoned that, if employers were permitted to confer economic benefits upon their employees to induce them to reject a union, no greater coercion would be possible than results from the employers' expressly protected right "to argue against the union" (R. 128).

The court concluded that, since Section 8(c) excepted all speech but promises and threats from the prohibition of Section 8(a)(1), it also authorized economic inducements.

Section 8(c), however, protects only "the expressing of any views, argument, or opinion, or the dissemination thereof." Neither its language nor its purpose embraces the exercise of economic power by an employer or a union. EPCO's act of instituting a new vacation schedule or authorizing increased pay for holidays was obviously not the expression of a view, argument or opinion. And when Congress fully guaranteed the rights of the employer and the union to air their views, it was dealing with the sort of conduct as to which neither side possesses any inherent advantages and which could, through the free exchange of ideas, be helpful in resolving the merits of an individual employee's voting choice. But if Section 8(c) were construed to extend beyond speech and to protect the "persuasive" use of economic power, it would give the employer the upper hand. Such a construction would not only be protecting conduct that is of no assistance whatever in resolving the legitimate issues raised in a representation election, but it would subject the employees' votes to the pressures of an employer's veiled suggestions of economic reprisal or benefit. A proper construction of the language of Section 8(c) in light of its purpose cannot, therefore, result in its extension to "persuasion" which is accomplished not with rhetoric, but with cash or other economic benefits.

## CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed and the cause remanded with instructions to enter a decree enforcing the order of the Board.

Respectfully submitted,

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SEPTEMBER 1963.

## APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*).

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

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U.S. GOVERNMENT PRINTING OFFICE: 1966